

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

15-0597

HB 655-FN, *establishing a credit against business profits taxes for motion picture production expenditures in New Hampshire*

House Ways and Means Committee

This bill establishes a tax credit against the Business Profits Tax (BPT) for motion picture expenditures made in New Hampshire (NH). The tax credit would be equal to 25% of the total aggregate payroll paid by the production company that constitutes NH source income when total production expenses incurred in NH is equal to or exceeds \$50,000 during the taxable year.

An additional tax credit is also available against the BPT. The additional credit is equal to 25% of all NH production expenses, and qualified non-NH expenses, not including expenses used to claim the first credit, where the production company is eligible for the first credit and either: (1) NH production expenses exceed 50% of the total production expenses; or (2) at least 50% of the total photography days of the film take place in NH; or (3) in excess of \$500,000 in eligible NH production expenses are incurred.

The tax credit shall be used against BPT and may be carried forward to any of the 5 subsequent taxable years. The aggregate of the credit to all taxpayers claiming the credit shall not exceed \$2,000,000 for any fiscal year.

Aggregate salary and compensation amounts for an individual in excess of \$2,000,000 shall not qualify for either of the tax credits against BPT under this bill.

In order to be eligible for one or both of the tax credits, the taxpayer must enter into an agreement with the NH Film Office. The NH Film Office, with the concurrence of the State Treasurer, will determine whether or not to enter into agreements with taxpayers.

The Department of Revenue Administration (DRA) does not have data on the number of motion picture production companies or the number of motion pictures filmed in the State as the State does not require any general filming permits or registration.

The maximum fiscal impact would be the \$2,000,000 limit that the law mandates as the aggregate total of credits allowed per fiscal year. Since an agreement is required in order to be eligible for the tax credits, the DRA has no way of knowing how many agreements the Film Office, in concurrence with the State Treasurer, would enter into or when the agreements would be effective.

This bill would take effect July 1, 2015; however, production may begin as early as January 1, 2015. The tax credits are first available for use in the tax year in which the expenses occurred, which would mean that credit could be used for Tax Year 2015. The tax return for Calendar Year 2015 could be filed beginning in March of 2016, which would cause the fiscal impact to begin during the second half of FY 2016. However, should the taxpayers be calendar year filers and want to file on extension, the amount of credit taken would not be known until October or November of 2016, in FY17.

The DRA cannot administer this bill as written. First, on page 1, Lines 25 – 28 state:

(e) The aggregate of tax credits to all taxpayers claiming the credit under this paragraph shall not exceed \$2,000,000 for any fiscal year. If the commissioner determines the aggregate limit is claimed in any fiscal year the commissioner shall grant each taxpayer claiming the credit the proportional share of the maximum aggregate credit amount.

The proposed law does not create a tax credit program to which taxpayers could apply and once all applications had been received, then, if necessary, the proportional tax credits could be awarded. There is no mechanism for the DRA to award proportional credits and thus the program cannot be administered by the DRA.

Next, on page 3, line 34 mentions the “income tax imposed by the provisions of this chapter.” RSA 77-A is the Business Profits Tax, it is not an income tax.

The DRA notes that this bill could be treating similarly situated taxpayers differently given the various factors required to qualify for the credit, the elimination of certain classes of expenses and the need to enter into an agreement in order to be eligible for the credit. For these reasons not all similarly situated taxpayers may be able to utilize the credit. "Distinctions in tax treatment must rest upon reasonable classifications of property, not upon classification of taxpayers owning a common class of property." Opinion of Justices, 132 N.H. 777 (1990) citing Opinion of Justices, 115 N.H. 306 (1975). A review by a constitutional lawyer should be performed on this bill.

The DRA would incur minimal additional administrative and IT costs to get the program up and running. Included in the unknown costs would be the adoption of rules, developing a certificate process for the transferring of credit, revising BPT tax forms, creating tax credits vouchers and developing a list of audit professionals to certify taxpayer's production expenses or costs.